

POI ENERGY, INC.

IBLA 80-207

Decided June 9, 1980

Appeal from decision of the Montana State Office, Bureau of Land Management, denying the petition for reinstatement of noncompetitive oil and gas leases. M 31988, M 32082 (Acq.)

Set aside and remanded.

1. Oil and Gas Leases: Reinstatement

A lessee whose oil and gas leases terminated by operation of law for failure to pay rental timely may be found to have exercised "reasonable diligence" in mailing the rental payments on Oct. 29 when they were due on Nov. 1, and the leases should therefore be granted reinstatement.

APPEARANCES: Jerome A. Lemire, Esq., Poi Energy, Inc., for appellant.

OPINION BY ADMINISTRATIVE JUDGE HENRIQUES

Poi Energy, Inc., has appealed from the November 30, 1979, decision of the Montana State Office, Bureau of Land Management, denying its petition for reinstatement of oil and gas leases M 31988 and M 32082 (Acq.). The leases had terminated by operation of law when appellant's rental payment failed to arrive in the State Office on or before the anniversary date of the leases, November 1, 1979. The State Office denied appellant's petition for reinstatement because it found appellant had failed to exercise reasonable diligence in submitting the rental payments.

Appellant mailed the rental checks from Cleveland, Ohio, on October 29, 1979, a Monday. The State Office, in Billings, Montana, received the envelopes containing the checks on November 2, 1979, a Friday. Appellant argues that it mailed the rental checks 3 days before the due date, which should have been sufficient time for delivery to the State Office by November 1.

[1] An oil and gas lease terminated by operation of law under 30 U.S.C. § 188(b) (1976) for failure to pay rental on or before the anniversary date of the lease may be reinstated only if, among other things, the failure to pay timely was either "justifiable or not due to a lack of reasonable diligence on the part of the lessee." 30 U.S.C. § 188(c) (1976). "Reasonable diligence" as explained in the regulations normally requires "sending or delivering payments sufficiently in advance of the anniversary date to account for normal delays in the collection, transmittal, and delivery of the payment." 43 CFR 3108.2-1(c)(2). This Board has held that mailing a payment from Wilmington, Delaware, on May 2 to Billings, Montana, where it was due June 1, constituted reasonable diligence. Phyllis Lane Zehr, 44 IBLA 261 (1979). Similarly, it was held that mailing a payment from Waukesha, Wisconsin, to Reno, Nevada, on October 29 which was due November 1 was reasonably diligent, George C. Otis, 30 IBLA 146 (1977); and from Oklahoma City, Oklahoma, to Silver Spring, Maryland, on October 29 which was due on November 1, was also reasonably diligent, Eason Oil Co., 16 IBLA 109 (1974). We adhere to our earlier holdings and find that appellant exercised "reasonable diligence" in transmitting its rental payments 3 days before the due date, and that its leases should be granted reinstatement.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the cases remanded to the BLM State Office for further action consistent herewith.

Douglas E. Henriques
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joseph W. Goss
Administrative Judge

